

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
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Michael HERMANN) Group Art Unit: 2872
	:
Application No.: 09/817,797) Examiner: Audrey Y. Chang
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Filed: March 27, 2001) Confirmation No. 8356
	:
For: DEVICE FOR QUANTITATIVE)
ASSESSMENT OF THE ALIGNED	:
POSITION OF TWO MACHINE)
PARTS, WORKPIECES OR THE LIKE	:

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On July 10, 2008, a Notification of Non-Compliant Appeal Brief was issued by the Examiner in which she held that:


The brief fails to provide the proper statement concerning the grounds of rejection. The final rejection of the application does not raise rejection *[sic]* under 35 USC 112, second paragraph. The objection to the claims cannot be converted to rejection under 35 USC 112, second paragraph.

It is submitted that deeming applicant's reply brief non-response on this basis is improper and it is for the Board, not the Examiner to determine if what the Examiner has categorized as an objection is, in fact, a rejection under 35 USC 112, second paragraph and has set forth applicant's basis therefor. The Examiner may choose to rebut applicants' position in her Examiner's Answer explain why her objection is not in fact a rejection, but it is submitted that no basis exists for the Examiner to refuse to address this issue by holding applicant's Brief to be non-compliant.

Therefore it is requested that the holding of applicant's Appeal Brief as being non-compliant is improper and is requested to be withdrawn. However, should the

Examiner continue to hold the Appeal Brief to be non-compliant, applicant reserves the right to petition such a decision to the Commissioner.

Respectfully submitted,

By: 

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